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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

~~EX PARTE~~ <sup>500</sup> FILED

In the Matter of  
  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

IB Docket No. 98-192  
File No. 60-SAT-ISP-97

REPLY TO OPPOSITION TO MOTION TO STRIKE

COMSAT Corporation ("COMSAT") hereby replies to the Opposition of the Satellite Users Coalition ("SUC Coalition") to COMSAT's Motion to Strike the Coalition's *ex parte* filing of September 9, 1999. The SUC Coalition's argument amounts to a unilateral effort to rewrite the Commission's *ex parte* rules and cover its improper presentation with an exception that the agency itself has never adopted.

COMSAT does not contend that the Coalition violated the Commission's rules simply by submitting its September 9 *ex parte* filing to the Secretary and *those FCC staff members actually present* at the eleventh-hour meeting prior to the release of the Sunshine Agenda. Rather, COMSAT submits that the SUC Coalition flagrantly violated the *ex parte* rules by serving a 28-page written presentation on six agency "decision-makers" who were not present at the September 8 meeting. The relevant provision here states plainly that a proper notice of an oral *ex parte* presentation is to be submitted only "to the Commissioners or Commission employees *involved* in the oral presentation." 47 C.F.R. § 1.1206(b)(2) (emphasis added).

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Strict construction of this rule is in accordance with the underlying rationale for the *ex parte* regulatory regime—to ensure the “fairness and integrity of the Commission’s processes”—as well as the general approach emphasized in the agency’s 1997 *ex parte* rulemaking order, which was to simplify and clarify the rules so that “everyone will be on clear notice” as to what communications are forbidden. *See Ex Parte Presentations in Commission Proceedings*, 12 FCC Rcd 7348, 7352 (1997).

The SUC Coalition’s service of its detailed September 9 document to 50% more FCC personnel than actually attended the September 8 meeting cannot be construed as anything other than a covert effort to communicate with agency staff members whom it was unable or unwilling to contact before the Sunshine Agenda was released. The Commission’s rules concerning notifications of oral *ex parte* presentations contain no exception for other “decision-makers” to whom no oral presentation was ever made.<sup>1</sup> Should the SUC Coalition truly believe that such an exception warrants consideration as a possible amendment to the *ex parte* regulatory framework, COMSAT suggests that the Coalition raise it in the proper fashion—by submitting a petition for rulemaking.<sup>2</sup>

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<sup>1</sup> The requirement for service of a copy of the *ex parte* notice to those FCC personnel actually in attendance is, obviously, for the purpose of alerting a staff member that the party who made an oral presentation to him or her has complied with the rules—and thereby relieving that staff member of the burden of ensuring that proper notification is included in the record. The written notice, therefore, is not a “presentation” within the meaning of the rules because it is not a communication “directed to the merits or the outcome of a proceeding.” 47 C.F.R. § 1.1202(a). The same written communication directed to Commission personnel not present at the meeting serves no such purpose; it operates only to convey the party’s views and arguments on the merits to the recipient.

<sup>2</sup> Such an exception would, however, circumvent the general purposes of the *ex parte* rules—and may well lead to a flood of paper being served on various FCC “decision-makers” on the day after the release of every Sunshine Agenda.

Accordingly, because the SUC Coalition on September 9, 1999, made prohibited *ex parte* presentations to numerous "decision-makers" in the above-referenced docket, COMSAT calls for the Office of General Counsel to investigate and take appropriate action under Section 1.1212 and, at a minimum, strike the presentation from the record.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of September, 1999, I caused copies of the foregoing Reply to Opposition to Motion to Strike to be hand-delivered to the following:

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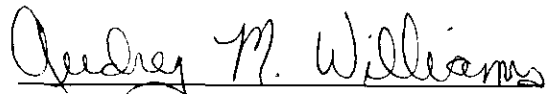
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